

No. 49, A.]

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CHAPTER 125.

AN ACT to amend 31.02 (1), 31.25 and 31.33 (1) of the statutes, relating to navigable waters.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 31.02 (1) of the statutes is amended to read:

31.02 (1) The commission, in the interest of public rights in navigable waters or to promote safety and protect life, health and property is empowered to regulate and control the level and flow of water in all navigable waters and may erect, or may order and require bench marks to be erected, upon which shall be designated the maximum level of water that may be impounded and the lowest level of water that may be maintained by any dam heretofore or hereafter constructed and maintained * * * *and which will affect the level and flow of navigable waters; and may by order fix a level for any body of navigable water below which the same shall not be lowered except as provided in this chapter;* and shall establish and maintain gauging stations upon the various navigable waters of the state and shall take other steps necessary to determine and record the characteristics of such waters.

SECTION 2. 31.25 of the statutes is amended to read:

31.25 Every dam, bridge or other obstruction constructed or maintained in or over any navigable waters of this state in violation of the provisions of this chapter *or of chapter 30*, and every dam not furnished with a slide, chute or other equipment prescribed by the commission, is hereby declared to be a public nuisance, and the construction thereof may be enjoined and the maintenance thereof may be abated by action at the suit of the state or any citizen thereof.

SECTION 3. 31.33 (1) of the statutes is amended to read:

31.33 (1) All mills and milldams lawfully erected or constructed, on streams not navigable at the time, under and pursuant to the provisions of chapter No. 48 of the territorial laws of 1840, chapter 62, laws of 1857, chapter 56, R. S. 1858, chapter 146, R. S. 1878, chapter 146, R. S. 1898, chapter 146, Wisconsin Statutes of 1911, 1913 or 1915 or under and pursuant to any special, private or local act, or under any other act whatsoever, which are not now abandoned but are still in existence and use, and all * * * *dams* heretofore or hereafter erected or constructed on streams not navigable in fact for any purpose whatsoever, shall be subject to and regulated and controlled by the provisions, so far as applicable, of sections 31.02, 31.03, 31.12, 31.18, 31.19, 31.20, 31.22, 31.25, 31.26 and 31.28 of the statutes, except that the provisions of said sections shall not prevent the owner of any land flooded or otherwise injured by any * * * milldam from recovering by action at law, full compensation for all damages resulting to him in times past and that will result to him in the future in consequence of such flooding and injury; provided that no damages suffered more than 3 years before the commencement of such action shall be recovered. The amount recovered shall constitute a first lien upon the milldam and upon the mill, if any, and such lien may be enforced by execution sale of the property affected. In every such action the amount paid or secured to be paid under prior laws as damages shall be considered and proper allowance made therefor. The authority hereby granted to bring such action shall not be construed as precluding the owner from proceeding under the provisions of chapter 32. Such owner may not exercise his option to bring such action after condemnation proceedings have been commenced against his property under the provisions of said chapter 32.

Approved May 18, 1949.